

AG Contract No. KR94 2706TRN  
ADOT ECS File No. JPA 94-192  
Project No. F-051-2-526/H4040 01C  
Highway: US-191  
Item No. 393

**AGREEMENT**  
**BETWEEN**  
**THE STATE OF ARIZONA**  
**AND**  
**PHELPS DODGE MORENCI, INC.**

THIS AGREEMENT is entered into 17 APRIL, 1995,  
pursuant to Arizona Revised Statutes Section 28-108 as amended,  
between the STATE OF ARIZONA, acting by and through its  
DEPARTMENT OF TRANSPORTATION (the "State") and PHELPS DODGE  
MORENCI, INC., a Delaware Corporation, acting by and through  
its duly authorized officer, hereinafter referred to as the  
"Company".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 and 28-1865 to enter into this agreement and has  
by resolution, a copy of which is attached hereto and made a  
part hereof, resolved to enter into this agreement and has  
delegated to the undersigned the authority to execute this  
agreement on behalf of the State.

2. The Company desires to enter into this agreement and  
has authorized the undersigned to execute this agreement on  
behalf of the Company.

3. In 1990, under the provisions of that certain  
agreement known as AG contract number KR890137TRD, which is  
attached hereto and made a part hereof, the State and the  
Company participated in the relocation of US-666 (now  
designated US-191) (Phase I). The Company desires to further  
expand its mining operations, and in so doing will encompass  
areas presently traversed by US-191, further necessitating the  
relocation thereof. The State and the Company desire to  
relocate US-191 upon patented lands owned or controlled by the  
Company, all at Company expense, hereinafter referred to as the  
Project.

---

4. Construction is planned in stages. Construction of Phase II, the Southside extension, involving US-191 from Mile Post (MP) 172.5 to MP173.6 will be completed during 1995. At the sole discretion of the Company, construction of Phase III, the Coronado extension, from MP175.1 to MP177.0, and construction of Phase IV, the American Mountain extension, from MP173.6 to MP174.3, may be accomplished and are tentatively scheduled before 1999.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

### 1. The Company will:

a. Furnish to State standards all survey data, right-of-way plans, engineering plans, specifications, estimates and such other documents and services required for construction. Provide review copies to the State at the 60 and 100 percent level of completion. Incorporate State review comments.

b. Convey to the State a perpetual easement for highway right-of-way at the completion of construction, in the form contained in Exhibit A, which is attached hereto and made a part hereof.

c. Call for bids and award one or more construction contracts for the Project. Administer same and be responsible for all costs associated with the Project. Reimburse the State for its reasonable direct actual costs associated with the Project, in an amount estimated at \$10,000.00 for each of the remaining three Phases.

d. Be responsible to reestablish grade in any area of the Project that exhibits differential settlement in excess of two inches at any point, or that experiences a major slope failure that establishes a new crest.

### 2. The State will:

a. Review the construction and right-of-way plans as provided by the Company and furnish written comments as appropriate. Upon completion of design acknowledge that the plans meet State requirements.

b. Present a report and recommendation to the Arizona Transportation Board that the proposed relocation of the highway be established as a state highway, and recommend the exchange for the existing alignment right-of-way easement.

c. Provide the Company construction engineering assistance as necessary and available. Invoice the Company for the reasonable direct actual costs associated with the Project, in an amount estimated at \$10,000.00 for each phase.

d. Upon completion and the State's acceptance of the Project, provide maintenance to the highway within the State right-of-way.

### III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of the Project and reimbursements pursuant to this agreement, and the State's acceptance of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled by either party at any time prior to the commencement of performance of any Phase of the Project under this agreement, upon thirty days written notice to the other party.

2. This agreement shall become effective upon execution by the parties hereto.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007


Phelps Dodge Morenci, Inc.  
Manager Engineer Services  
4521 Highway US-191  
Morenci, AZ 85540

7. This agreement is intended to define and limit the rights and obligations of the parties as between themselves only and nothing herein is intended to be for the benefit of any person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**PHELPS DODGE MORENCI, INC.,**  
a Delaware Corporation

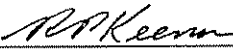
**STATE OF ARIZONA**  
Department of Transportation

By   
TIMOTHY R. SNIDER  
President

By   
AUGUST N. HARDT  
Deputy State Engineer

ATTEST

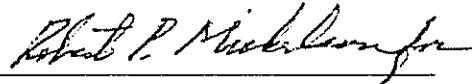
I, R. P. Keenan, certify as Assistant Secretary that Timothy R. Snider is President of Phelps Dodge Morenci, Inc. and is authorized to sign for the Corporation.

By   
Assistant  
Secretary


RESOLUTION

BE IT RESOLVED on this 24th day of October 1994, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Phelps Dodge Corporation for the purpose of defining responsibilities for the relocation of US-191 near Morenci.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Chief Deputy State Engineer for approval and execution.

A handwritten signature in dark ink, appearing to read "Larry S. Bonine", is written over a horizontal line.

LARRY S. BONINE  
Director

APPROVED  
  
Assistant Attorney General  
Attorney for Department  
of Transportation  
Date 4/17/95

